IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T.

ROOPA. V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL JAIL APPEAL NO.134/2006
against the Judgment dated 01.12.2005,
passed by the District & Sessions Judge,
Pratabgarh in Sessions Case No.91/2005
(State v. Roopa).

DATE OF JUDGMENT: **AUGUST 28, 2006.**

P R E S E N T

HON'BLE MR. JUSTICE N. N. MATHUR
HON'BLE MR. JUSTICE R. P. VYAS

Mr.K.R. Bhati, Amicusc Curiae, for Appellant.
Mr.J.P.S.Chaudhary, P. P. for the State of Rajasthan.

REPORTABLE. **BY THE COURT (PER HON'BLE R. P. VYAS, J.):-**

This Jail appeal is directed against the Judgment dated 01.12.2005, passed by the learned Sessions Judge, Pratabgarh, whereby appellant Roopa S/o. Rajing has been convicted of offences under Section 302, IPC,and sentenced to life

imprisonment and a fine of Rs.5,000/-, in default of payment of fine, to further under six months' Rigorous Imprisonment; under Section 447, IPC, to 3 months' simple imprisonment and under Section 323, IPC, to three months' simple imprisonment. All the substantive sentences were directed to run concurrently.

The prosecution story, as unfolded during trial, is that on 05.04.2005, at 6.00 P.M., one Babulal s/o. Rajia lodged a verbal report to the Sub-Inspector of Police Bhairon Singh, Police Station, Pratabgarh, District – Chittograrh that on the day of the incident at around 5.00 P.M., he was in his field. His nephew Nanalal s/o. Kesuram, aged 10 years and his niece Dhapuri, both were grazing she-goats in the field of 'Aama wala'. Suddenly, his nephew cried loudly “maare – re, maare – re, Dauro'. His cries attracted the informant – Babulal, Devilal and Ambalal and they immediately rushed to the scene of the incident and saw that accused Roopa s/o. Rajiga was inflicting 'Lath' blows on the head of his nephew Nanalal. He has inflicted 3-4 'Lath' blows on the head of Nanalal. On his intervening, Roopa gave him 'lath' blows also, on his head, legs and hands . Ultimately, the informant – Babulal, Devilal, Ambalal and Jagdish succeeded in over-powering Roopa. Thereafter,they found that Nanalal had died on the spot. Accused Roopa immediately took to his heels. Thereafter, his brother – Keshulal also came to the scene of the incident. It was further alleged by informant - Babulal that as

she-goats of Nana had entered the field Roopa, so, with an intention to kill him (Nanalal), Roopa has given 'lath' blows on his head and has committed his murder. This information was recorded into writing vide Ex.P-9.

On the basis of the aforesaid report (Ex.P-9), FIR No.166/2005 (Ex.P-28) was recorded and a case under Section 302, IPC, was registered and investigation commenced.

During the course of investigation, photographs of the deceased Nanalal were taken vide Exs.P-1 to P-8, Panchayatnama of the dead body of deceased Nanalal was prepared vide Ex.P-10, blood-stained clothes of the deceased were also seized vide Ex.P-11, site was inspected vide Ex.P-12, and site-plan was prepared vide Ex.P-13, injury report of Babulal was prepared vide Ex.P-14, blood-smeared and controlled soil were taken from the scene of the incident and sealed vide Ex.P-15, dead body of the deceased was handed over to his father vide Ex.P-16, seized and sealed articles were sent to the Assistant Director, FSL, Udaipur vide Ex.P-17, Post-Mortem Report of deceased Nanalal was got prepared vide Ex.P19, accused – Roopa was arrested vide Ex.P-21, 'Lath' was seized and sealed vide Ex.P-22, clothes of the deceased were also seized and sealed vide Ex.P-27, statements of the witnesses under Section 161, Cr.P.C. were recorded and the FSL Examination report was obtained vide Ex.P-37. The accused

Roopa was also got medically examined vide injury report Ex.D-4A.

After completing necessary investigation, Police filed challan against the appellant under Sections 447, 302 and 323, IPC, in the Court of the Additional Chief Judicial Magistrate, Pratabgarh. Since the case was exclusively triable by the Court of Sessions Judge, it was, therefore, committed to the Sessions Judge, for trial. The learned Sessions Judge, Pratabgarh framed charges against the accused. . The accused pleaded not guilty and claimed trial.

In order to prove and establish its case, the prosecution produced 19 witnesses (P.W. 1 to P.W. 19) and produced 37 documents (Exs. P-1 to P-37). In defence, the accused produced one witness Dr.Vijay Agrawal (D.W.1). In the explanation under Section 313, Cr.P.C., the accused pleaded not guilty and stated that he has not given any beating, rather he has been beaten.

After hearing the final submissions of both the learned counsel for the parties, the learned Sessions Judge, Pratabgarh found the case proved against the accused-appellant Roopa and vide his Judgment dated 01.12.2005, convicted and sentenced him as mentioned above.

Being aggrieved by the Judgment dated 01.12.2005, the accused-appellant Roopa has preferred this Jail appeal.

It is submitted by learned counsel, appearing for the

appellant that the prosecution witnesses – PW 11 Dhapuri, PW 2 Babulal, PW 4 Devilal , PW 10 Ambalal and PW 16 Jagdish are interested witnesses and they are related to the deceased Nanalal. Thus, according to him, their testimony is not trustworthy. It is further submitted there were inimical relations between the parties as the boundary walls of the fields of both the are situate adjacent to each other. It is also submitted that she-goats had entered into the field of Roopa, on account of which, he became angry and quarrelled with Babulal (P.W.2) and in the meanwhile, Nanalal came to intervene and, in that process, he (Nanalal) sustained injuries of 'Lath' on his head which resulted into his death. It is submitted that in the scuffle, not only Babulal, but Roopa had also sustained injuries. According to the learned counsel, the accused had no intention to cause the death of deceased Nanalal. It is contended by the learned counsel that PW 11 Dhapu has deposed that Roopa inflicted four 'Lath' blows on the head of deceased Nanalal, whereas, according to the Post Mortem Report (Ex.P-19) three injuries were found on the external part of the body of the deceased. It is further contended by the learned counsel that Vardichand, who informed the Police on telephone about the incident, has not been examined by the prosecution. It is also contended that the neighbours, whose fields are situated near the place of incident, have not been examined by the

prosecution. Lastly, it is submitted by the learned counsel for the accused-appellant that the offence committed by him falls within the purview of Section 304, Part II, IPC and not Sections 302, IPC. In support of his contentions,learned counsel has placed reliance on the case of Ganga Ram v. State (2006 [1] Cr.L.R. [Raj.] 194), Hari Ram v. Stae of Haryana (AIR 1983 SC 185) and Khuman Singh & others v. State of M.P. (2005 Cr.L.R. [SC] 164).

In Gangaram v. State (Supra), the occurrence took place all of a sudden and the appellant gave a lathi blow on the head of the deceased and there was no evidence that the accused intended to cause particular injury which was sufficient in the ordinary course of nature to cause death. The trial Court convicted and sentenced the appellant under Section 302, IPC. On appeal, this Court altered the conviction from Section 302, IPC, to Section 304, Part-II, IPC.

In Hari Ram v. State of Haryana (Supra), during the heat of altercation between the deceased and the appellant, the appellant thrust a 'jelli' into the chest of the deceased. It may be pointed out the only one blow was struck by the appellant at the deceased. The trial Court convicted the appellant under Section 302, IPC. On appeal before the Supreme Court, their Lordships of the Supreme Court set aside his conviction under Section 302, IPC, but convicted him under Section 304, Part – II, IPC.

In Khuman Singh & Others v. State of M.P. (Supra),

Quarrel arose on a trivial issue and the deceased was assaulted by lathi and stone, which caused injury to his liver, resulting into profuse bleeding and ultimately to his death. There was no premeditation on the part of the appellant. The trial Court convicted the appellant under Section 302, IPC. On appeal before the Supreme Court, their Lordships of the Supreme Court set aside the conviction of the appellant Section 302, IPC , but convicted him Section 304, Part-II, IPC.

On the other hand, learned Public Prosecutor, while supporting the impugned judgment of the trial Court, submitted that the prosecution has succeeded in proving its case beyond reasonable doubt against the accused-appellant Roopa and he has rightly been convicted and sentenced by the trial Court under Sections 302, 447 and 323, IPC, after appreciating the evidence available on record. While controverting the submissions of the learned amicus curiae for the appellant, it is submitted by the learned Public Prosecutor that neither there were inimical relations between the parties, nor the quarrel had taken place between Babulal (P.W.2) and accused Roopa. He submitted that deceased Nanalal and Dhapuri were playing in their field, the accused Roopa came to their field at around 5.00 P.M. He was angry on account of the fact that she-goat had entered into his field. After coming to the field of the deceased, he inflicted 'Lath' blows on the head of deceased Nanalal, which

resulted into his death on the spot. He submitted that the accused-appellant has committed heinous offence as the minor boy of 10 years has been done to death in a most inhuman and cruel manner. While drawing attention of the Court towards the statement of PW 11 Dhapu, learned Public Prosecutor submitted that cries of Dhapu "maare -re, maare – re, dauro" attracted Babulal, Ambalal and Devilal. They rushed to the scene of the occurrence and found that accused Roopa had been giving 'Lath' blows on the head of deceased Nanalal and he succumbed to the injuries on the spot. While Babulal tried to intervene, he was also given 'Lath' blows on his head and hands by accused Roopa, which is evident from the injury report (Ex.P-14). In that view of the matter, the learned trial Court has rightly convicted and sentenced the accused-appellant Roopa for the offences under Sections 302, 323 and 447, IPC.

Heard learned counsel for the parties.

Babulal (P.W.2) has deposed that on the day of the incident, he was in his field. He heard cries "maare – re, maare – re, dauro" from the field of Nanalal. Then, he, Ambalal, Jagdish and Devilal ran towards the field of Nanalal and found that under a mango tree, Roopa was inflicting 'Lath' blows on the head of Nanalal. While they intervened, accused Roopa also gave two 'Lath' blows on his (Babulal's) head and hand which resulted into the fracture on the finger of his left hand. Ultimately, they

over-powered him. Then they found that Nanalal was lying dead in the pool of blood. The head of Nanalal had burst and come out and the blood was oozing from it. In the cross-examination, he stated that there was no enmity with regard to land between him and Roopa. He denied the suggestion that on account of enmity, Roopa was given beating by this witness, Ambalal, Devilal and Jagdish. He also denied the suggestion that Nanalal had come to intervene and in that process, he received 'Lath' injuries on his head. This witness was vigorously cross-examined, but nothing came out from his deposition by which adverse inference can be drawn against him and his testimony can be held to be not creditworthy. Rather his testimony supports the case of the prosecution.

Devilal (P.W.4) has also deposed that on the day of the incident, he was in his field. Apart from him, Ambalal and Babulal were also present in his field. The cries, "maare – re, maare – re" attracted him and others. They all ran towards the field of Keshuram, from where the voice of crying was coming. They found there that the accused Roopa was giving 'Lath' blows on the head of Nanalal. Babula went forward to intervene. Then Roopa also gave two 'Lath' blows on his hands and head. Thereafter, Roopa ran away from the scene of the incident. The head of Nanalal had burst and come out and the blood was oozing from it. In the cross-examination, he denied the

suggestion that there was any enmity on account of land dispute, and on account of which, they gave beating to Roopa. He also denied the suggestion that while they were beating Roopa, Nanalal came to intervene and in that process, he sustained 'Lath' injuries on his head. However, he stated that there is only common boundary wall ('Mer') between the fields of Keshuram and Roopa. This witness was vigorously cross-examined, but nothing came out from his deposition by which adverse inference can be drawn against him. Rather his testimony supports the case of the prosecution.

Ambalal (P.W. 10) has deposed that on the day of the incident, he and Babulal were working in his field. They heard cries “maare – re, maare – re, dauro”. The cries came from the field of Dhapu and Nana. They rushed towards the field of Dhapu and found that under the mango tree, Roopa was giving 'Lath' blows on the head of Nanalal. Jagdish had also appeared on the scene of the incident. When he tried to intervene, he was given 'Lath' blows on his head and hands by Roopa. Thereafter, they over-powerd Roopa. Then they went to Nanalal. His head was burst and had come out and the blood was oozing from it. Nanalal had succumbed to the injuries on the spot. In the cross-examination, he denied the suggestion of having any enmity with Roopa and on account of which, giving any beating to Roopa. He also denied the suggestion that while they were

beating Roopa, Nanalal came to intervene and, in that process, he sustained injuries with 'Lath' on his head. This witness was vigorously cross-examined, but nothing came out from his deposition by which adverse inference can be drawn against him and his testimony can be held dis-creditworthy. Rather his testimony inspires confidence and supports the case of the prosecution.

Dhapu (P.W.11) has also deposed that on the day of the incident, at about 5.00 p.m., she and her brother Nanalal were playing in their field under a mango tree. Roopa came there and gave 'Lath' blows on the head of her brother Nanalal. Then she cried “maare – re, maare – re, dauro”. Her cries attracted Babulal, Ambalal and Devilal. They all came to the field – the place of incident. When Babulal went forward to intervene, he was given 'Lath' blows by Roopa on his head and hands. Then, Roopa ran away with 'Lath' from the scene of occurrence. In the cross-examination, she denied the suggestion of having given any beating to Roopa by Devilal, Babulal and Ambalal. She also denied the suggestion of giving any beating to Roopa by her uncle (Babulal), and Nanalal came to intervene and, in that process, he sustained 'Lath' blows on his head. This witness was vigorously cross-examined, but nothing came out from her deposition by which adverse inference can be drawn against her deposition. Her evidence appears to be genuine and natural,

inspires confidence and supports the case of the prosecution.

Similarly, Jagdish (P.W.16) has deposed that on the day of the incident, at about 5.00 P.M., he was working in his field. His field is situated near the field of Keshuram. Under the mango tree of Keshuram, Nanalal and Dhapuri were playing. Then, he suddenly heard the cries of "maare – re, maare – re" and went to the field of Keshuram, where Roopa was beating Nanalal with 'Lath' and was giving blows on his head. When Babulal went forward to intervene, he was also dealt with 'Lath' blows on his head and hands by Roopa. Thereafter, Roopa ran away from the scene of the incident. They found that Nanalal had died. In the corss-examination, he denied the suggestion of having any enmity with regard to the field among Keshuram, Babulal and Roopa. He also denied the suggestion of giving any beating to Roopa by Babulal, Devilal and Ambalal. He also denied the suggestion put forward to him that while Roopa was given beating by Babulal etc., then Nanalal came to intervene and, in that process, he sustained 'Lath' blows on his head. This witness was vigorously cross-examined, but nothing came out from his deposition by which adverse inference can be drawn against him and any discredit can be given to him testimony. Rather his testimony supports the case of the prosecution.

Keshuram (P.W.9) has deposed that on the day of the incident of the incident, while he was going to his field, he saw

Roopa, having 'Lath' in his hand, going towards his house. When he went to his field, he found Nanalal lying dead. He further deposed that under the mango tree of his field, Ambalal, Babulal and Devilal were also present. Nana was done to death by Roopa. Blood was oozing from his head. He also deposed that when Babulal, Ambalal and Devilal tried to intervene, Babulal received injuries at the hands of Roopa on his head and hands. In the cross-examination, he stated that he had seen Roopa running, having a 'Lath' in his hand. He denied the suggestion of having given any beating to Roopa by Babulal, Jagdish, Devilal and Ambalal. He also denied the suggestion that Roopa received the injuries during the scuffle. He also denied the suggestion of having any enmity with Roopa on account of land dispute. He also refused to accept the suggestion that Nana came to intervene during scuffle between Roopa and Babulal and, in that process, he sustained 'Lath' blows on his head. This witness was vigorously cross-examined, but nothing came out from his deposition by which adverse inference can be drawn against his testimony.

Dr.Vijay Agrawal (P.W.6) has deposed that on 06.04.2005, he was posted as Medical Officer in District Hospital, Pratabgarh. On the 'tehrir' of Police, he conducted the Post Mortem Examination on the body of deceased Nana. He found the following injuries on his person :-

"(1) Lacerated wound 5 x 5 cm abrasion on Neck.
(2) Bruise 5 x 5 cm. On right forehead.
(3) Bruise 5 x 3 cm. On right cheek below right ear."

According to the opinion of the Doctor, the cause of death was head injury, haemorrhage and shock. Injury was caused on the back portion of the head. The injuries were sufficient in the ordinary course of nature to cause death.

Babulal (P.W.2) was also examined vide injury report Ex.P-14. According to the Doctor, he received two bruise injuries of 3 x 2 cm. On his left hand and 2 x 2 cm. on the scalp. The injuries were caused by blunt weapon. The injury No.2 was simple in nature and for injury No.1, X-ray was advised.

Kanhaiyalal (P.W.17), has deposed that on 05.04.2005, he was posted as Station House Officer of the Pratabgarh Police Station. During the course of investigation, he inspected the site and prepared site plan, the accused was arrested, on his information under Section 27 of the Evidence Act, the alleged 'Lath' was recovered and sealed, clothes of the deceased were also seized and sealed, the post mortem of the dead body was got conducted, blood stained shirt of the accused Roopa was also seized and sealed. The Investigating Officer specifically stated during the course of cross-examination that there was no enmity between the complainant and the accused. He further stated that after the incident, the accused was hospitalised. The

accused has also received injuries on his both the hands. According to the Investigating Officer, the accused was given beating by the angry villagers. He stated that Nanalal and Dhapu were grazing she-goats. She-goats had entered the field of the accused, on account of which, the accused Roopa infuriated and caused fatal injuries with 'Lath' on the head of deceased Nanalal which resulted into his death instantaneously. In the cross-examination, the Investigating Officer denied the suggestion that on account of old enmity, Devilal and Babulal had given beating to the accused Roopa and deceased Nanalal intervened in the scuffle and, in that process, he received 'Lath' injuries on his head. He also denied the suggestion that on account of old enmity, the accused Roopa has been falsely implicated in the case.

It may be mentioned that vide Ex.P-11, blood stained clothes of the deceased were seized and sealed and vide Ex.P-27, blood-stained shirt of the accused Roopa was seized and sealed and vide Ex.P-22, 'Lath' was seized and sealed. PW 18 Chauthmal, Malkhana Incharge, Police Station, Pratabgarh has testified that he received all the articles from the Investigating Officer in sealed condition and deposited the same in the Malkhana. These articles were sent through Ummed Singh Constable to the FSL for examination. PW 18 Ummed Singh has testified that he has received all the articles from the Malkhana

Incharge in sealed condition and handed over the same in the Office of FSL and received due receipt thereof. PW 19 Chauthmal has testified that he received the articles from the FSL in sealed condition and the same were produced in the Court in the sealed condition. It is evident from the FSL report (Ex.P-37) that the articles were received in sealed condition and blood group 'AB' was found on Exhibits 3, 4, 5 and 6.

It is evident from the statements of Babulal (P.W.2), Devilal (P.W.4), Ambalal (P.W.10), Dhapuri (P.W.11) and Jagdish (P.W.16) that the dispute took place on a trivial issue of entering she-goats in the field of accused Roopa, on account of which he infuriated, came to the field of deceased Nanalal. When the deceased and her sister Dhapuri were playing under a mango tree, the accused gave 'Lath' blows on the head of the deceased, which proved fatal and resulted into the death of deceased Nanalal instantaneously. It is also established from the evidence on record that there was no enmity between the accused Roopa and the deceased Nanalal. This fact also stands corroborated from the statement of the Investigating Officer PW 17 Kanhaiyalal that during the course of investigation, no enmity was found between the accused and the deceased. Apart from that, the contention of the learned amiscus curiae that while Babulal was scuffling with accused Roopa, deceased Nanalal intervened and, in that process, he received 'Lath' blows which

resulted into his death, does not hold much water, as there is nothing on record suggest that scuffle between Roopa and Babulal had taken and the deceased had come to intervene and, in that process, he received fatal injuries on his head, which resulted into his instantaneous death. Rather the testimony of Dhapuri, Ambalal, Jagdish and Devilal is worth reliable and inspires conficence, in which they have clearly stated that the crying of "maare – re, maare – re" attracted them, they immediately rushed to the scene of the occurrence and found that accused Roopa was giving 'Lath' blows to deceased Nanalal on his head. Not only this, but accused Roopa also gave 'Lath' blows to the intervener – Babulal also, which is evident from the injury report (Ex.P-14). It is significant to note that the testimony of these witnesses remained unshattered and unshaken throughout during the course of cross-examination. Their testimony inspires confidence. Thus, in this view of the matter, the arguments of the learned amicus curiae that the witnesses are in relations with the accused and they were interested witnesses and there were inimical relations between the partis on account of common boundary wall of the field of the accused and deceased and the accused has been falsely implicated, are not sustainable in the eye of law.

With regard to the arguments of the learned counsel that Vardichand, who informed the Police telephonically about the

incident has not been examined by the prosecution, is concerned, it does not affect the prosecution story, as the eye witnesses of the incident, namely, Dhapuri, Babulal, Ambalal, Jagdish and Devilal have been examined by the prosecution. They have supported the prosecution story and their testimony remained unshattered during the course of cross-examination. Thus, this argument of the learned counsel does not hold much water.

The next argument of the learned counsel that neighbours, namely, Mohan, Mangla and Kachru, whose fields are situated near the field of the deceased, have not been examined by the prosecution is concerned, it may be pointed out that the Investigating Officer PW 17 Kanhaiyalal has stated during the course of cross-examination that since their fields were situated at a distant place, therefore, their statements were not recorded. Apart from that, when the statements of eye-witnesses have been recorded and their statements appear to be trustworthy and creditworthy, then not recording of statements of neighbour witnesses, whose fields are situated at a distant place, does not hamper the prosecution story. In this view of the matter, the aforesaid argument of the learned counsel is not sustainable.

So far as the argument of the learned counsel that the accused had no intention to cause the death of deceased Nanalal is concerned, it may be mentioned that though the accused had

no intention to cause such bodily injury as was likely to cause death, but he had the knowledge that the injury which he is causing by 'Lath' is likely to cause death. In other words, though the intention to cause death cannot be imputed to him, but it would be reasonable to infer that that the accused Roopa had the knowledge that any injury on the vital part of the body of the deceased Nanalal would cause death. Thus, it clearly appears to be a sudden affair. He inflicted injury with 'Lath' on the head of the deceased Nanalal. The minor Nanalal died instantaneously. The doctor has also opined that injury No.1 was inflicted on the back side of the head. The cause of death was head injury, haemorrhage and shock. Thus, in the totality of the circumstances, in our opinion, the appellant Roopa cannot be held to be guilty for committing the murder of Nanalal. There appears to be no premeditation on the part of the accused-appellant Roopa. It is not a case of murder, but a case of culpable homicide not amounting to murder, which is punishable under Section 304, Part II, IPC.

Consequently, the appeal is partly allowed. The conviction and sentence awarded to the accused – appellant Roopa under Sections 323 and 447, IPC, are maintained. However, his conviction under Section 302, IPC, is altered to Section 304, Part-II, IPC. The sentence of imprisonment for life is reduced to the sentence of five years' rigorous imprisonment and a fine of

Rs.1000/-. In default of payment of fine, he will further suffer six months' rigorous imprisonment.

The Jail appeal stands partly allowed as indicated above.

(R.P. VYAS), J. (N. N. MATHUR), J.

S.C.Dave, PS.